

# LICENSING PANEL HEARING

A record of a Licensing Panel hearing held on Thursday 19 September 2013, at the Town Hall, Royal Leamington Spa at 2.00 pm.

**PANEL MEMBERS:** Councillors Illingworth, Wilkinson and Wreford-Bush

**ALSO PRESENT:** Emma Dudgeon (Licensing Enforcement Officer), Caroline Gutteridge (Council's Solicitor) and Graham Leach (Democratic Services Manager).

(Councillor Wilkinson had replaced Councillor Mrs Grainger on the Panel after the agenda had been published)

## 1. APPOINTMENT OF CHAIRMAN

**RESOLVED** that Councillor Illingworth be appointed as Chairman for the hearing.

## 2. DECLARATIONS OF INTEREST

There were no declarations of interest.

## 3. APPLICATION FOR THE GRANT OF A PREMISES LICENCE UNDER THE LICENSING ACT 2003 FOR ALTORIA, 45 WARWICK STREET, ROYAL LEAMINGTON SPA

A report from Health and Community Protection was submitted which sought a decision on an application for a new premises licence from Warneford Bars Limited for Altoria, 45 Warwick Street, Royal Leamington Spa.

The determination of the application had been deferred by a Licensing Panel on 3 September 2013 to enable the applicant further time to consider evidence submitted by Warwickshire Police.

The Chairman introduced himself, other members of the Panel and officers, and asked the other parties to introduce themselves.

The following were present; Mr Jenkins, Environmental Health; Sergeant Calver, Warwickshire Police; Mr Potts, Solicitor to the applicant; Mr Moore Licensing Consultant to the applicant; and Mr Gill, Designated Premises Supervisor for the premises.

The Chairman asked Mr Potts if he was willing to accept the plan from Environmental Health that outlined the residential premises in the area. Mr Potts was content to accept the plan on the understanding that while they could be residential premises they could be vacant at present.

The Council's Solicitor explained the procedure that the hearing would follow.

## **LICENSING PANEL HEARING MINUTES (Continued)**

The Licensing Enforcement Officer outlined the report and asked the Panel to consider all the information contained within it, and the representations made to the meeting, and to determine if the application for a premises licence should be approved.

The report referred to those matters to which the Panel had to give consideration, the statutory guidance issued by the Secretary of State, the Council's Licensing Policy Statement and the Licensing objectives.

The report advised that the applicant had applied for a premises licence to cover the performance of plays, indoor sporting events, films, live music, performance of dance, late night refreshment, anything similar to live and recorded music and dancing, the sale of alcohol for consumption both on and off the premises. The hours of operation for each of these aspects was detailed in Appendix 1 to the report.

An operating schedule had been submitted with the application, which would form part of any premises licence issued and was set out in the report.

Mr Potts outlined the application. He explained that although this was a new application, in essence the application was only different from the current licence by virtue of an additional hour on a Tuesday and Wednesday. The new application had been submitted to avoid any adverse decision reducing the current hours of operation.

When the owners took over the premises they had applied for these hours and longer but reduced the hours back to ensure that they could continue to operate. Since they started managing the premises over £1.7million had been spent on refurbishing the building which included removing the separate entrance and removing the old Shakespeare Bar. The works had brought in a new cliental and a new security team had also been introduced.

The premises had received no direct contact from residents about noise problems, it operated to the current conditions on its licence including a noise limiter and the benefit of the stair well between it and the Copper Pot (the premises located next door). Mr Potts accepted that a visit had been made by Mr Jenkins to check noise levels and he had found that these were acceptable.

It was the applicants' view that the premises were unrivalled but they were at a slight disadvantage to other premises in the locality because of their shorter opening hours.

Mr Potts submitted that the premises had been the cause of relatively little crime in the 11 months of operation. The evidence from the Police was based upon generic data from the Warwickshire Observatory and, on the specific incidents, 20 of them were not directly attributable to the premises. In addition, the number of people removed from the premises by the security team provided a better picture about the good management skills of the premises.

## **LICENSING PANEL HEARING MINUTES (Continued)**

With regard to the cumulative impact zone, this was not a new premises, it had been there for 11 or 12 years and the capacity was no greater now. In addition, a number of local premises had all closed showing that demand was decreasing. Mr Potts concluded reminding the Panel that because an application was in the Cumulative Impact Zone it did not mean the application should automatically be refused.

In response to questions from the Panel, Mr Potts explained that:

- all aspects of the licence were exactly the same as at present except for an additional hour on the Tuesday and Wednesday;
- confirmed that the application for off sales was incorrect and should only be from 08:00 to 21:00;
- the trading disadvantage was purely because of the current hours of operation which were shorter for this premises compared to others in the vicinity.

In response to questions from Sergeant Calver , Mr Potts explained that:

- the target audience on Tuesday was students and local people on Wednesday; and
- the main aim was to cater for the overflow from Smack (a nearby nightclub).

Sergeant Calver explained the problems from the premises as outlined within the documents circulated to the Panel. It was his opinion that guidance on the Cumulative Impact Zone advised that the applicant must provide a rebuttal showing that there would be no negative impact upon one or more of the licensing objectives.

He conceded that some of the evidence submitted related to the premises in its former name, however, this was after the current management took over the premises.

In response to questions from the Panel, Sergeant Calver explained that:

- it was the opinion of the Police that there was a strong possibility that if the increase was approved the number of incidents at the premises would increase; and
- it was possible that the incidents were not at these premises that they could be elsewhere but it would be unlikely to spread to premises where there were not already incidents;

Mr Jenkins from Environmental Health explained that even this minimal extension of hours would increase disturbance for local residents when previously they had respite during the week days compared to disturbance at the weekends. The approval of this application would also create a precedent for other premises to follow and undermine the intention of the Cumulative Impact Zone.

It was explained to the Panel that the premises had a history of loud music, an abatement notice had been served in June 2012 following observation of statutory noise nuisance from the residential premises above the Copper Pot. Following this work, the noise limiter levels were reset, but there was concern over the party wall and transmission of noise through this. While the stair well was present it did not provide adequate noise prevention and

## **LICENSING PANEL HEARING MINUTES (Continued)**

for this reason the team had advised, during the refurbishment, that improved noise insulation should be included on the party wall.

Mr Jenkins concluded that there was concern about the reliability and limitations of sound limiters because they had weaknesses depending on the DJ, the music being played and audio levels. Therefore they could not be taken as being a 100% reliable.

The Solicitor for the Council advised Members that the guidance on Cumulative Impact Zones was that the policy should not be absolute and it was for the Panel to apply appropriate weight based upon the evidence and the application.

In response to questions from the Panel, Mr Jenkins explained that:

- Altoria was not at fault for the noise limiter issues but they generally had weaknesses; and
- insulation was required for the party wall because it would reduce the overall impact not just that from the extra hour, but it should be noted the extra hour would make the problem worse.

Mr Potts summarised on behalf of the applicants. He explained that the noise limiter on the premises cannot be tampered with and was not adjustable. He emphasised that the incidents outlined should only be considered where they were venue specific and needed to show an detrimental effect on the licensing objectives. The premises had strong management and no evidence had been submitted that the increase in hours would add or would be likely to add to the impact in the Cumulative Impact Zone. He highlighted that the local nightclub, Smack in the adjacent road had a licence until 4.00am every morning of the week and by granting this application the Panel could be helping the area by providing an alternative venue.

The Chairman asked all parties, except the Solicitor and Democratic Services Manager, to leave the room, at 3.20pm, while the Committee determined the application.

**RESOLVED** that the application be refused.

This is because the panel believe that the applicant has not demonstrated that the application will not add to the cumulative impact on the licensing objectives - specifically the prevention of crime and disorder and the prevention of public nuisance. The Panel have considered the Police evidence and the applicant's comments on this and evidence of the Environmental Health Officer and the applicant's comments on this. The Panel have also considered the local authority Licensing Policy and the Home Office Licensing Act Guidance. The Panel does not consider that there is sufficient justification for departing from the licensing policy in the circumstances of this case.

## **LICENSING PANEL HEARING MINUTES (Continued)**

The Panel does not consider that there are any conditions that could be applied to the licence that would allow the application to be granted.

All parties were invited back into the room, informed of the decision and reminded that they had a right of appeal to the Magistrates Court within 21 days of formal notification.

(The meeting finished at 3.45 pm)